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## **Procedural Safeguards Notice**

The Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) entitles all eligible children with disabilities to a free appropriate public education (FAPE). As a parent of a child with a disability (or as an adult student with a disability if rights have transferred to you) the IDEA 2004 and state law provide you with specific procedural safeguards or rights. This *Procedural Safeguards Notice* gives you an explanation of your rights in the following outline:

<b>Section</b>	<b>Title</b>
1.	Consent
2.	Written Notice
3.	Evaluation/Reevaluation Procedures
4.	Independent Educational Evaluation (IEE)
5.	Individualized Education Program (IEP) and Least Restrictive Environment (LRE)
6.	Resolving Disagreements about the Education Program
	6.a. IEP Facilitation
	6.b. Mediation Provided by the SDE
	6.c. Formal Complaint
	6.d. Due Process Hearing
	6.e. Expedited Due Process Hearing
7.	General Provisions for Discipline under the IDEA 2004
8.	Procedures for Disciplinary Placement in an Interim Alternative Educational Setting (IAES)
9.	Attorney Fees
10.	Requirements for Unilateral Placement in a Private School/Facility at Public Expense
11.	Education Records
12.	Using Public and Private Insurance Funds to Provide FAPE

Your school district can provide more information on these rights. If you have questions, you should speak to the special education teacher, school principal, director of special education, or superintendent in the district.

### **For further explanation on any of these rights you may also contact:**

State Department of Education  
Bureau of Special Population Services  
P.O. Box 83720  
Boise, Idaho 83720-0027  
208/332-6910  
TT: 800/377-3529

Idaho Parents Unlimited, Inc. (IPUL)  
600 N. Curtis, Suite 145  
Boise, Idaho 83705  
800/242-4785

Comprehensive Advocacy, Inc. (Co-Ad)  
4477 Emerald St., Suite B-100  
Boise, Idaho 83706  
V/TT: 208/336-5353  
800/432-4601

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## 1. Consent

Consent, indicated by your signature, means that you have been fully informed of and understand and agree to certain educational activities or actions before they take place. The request for consent will describe the action and list records, if any, that will be released and to whom. Your consent is voluntary and may be revoked at any time prior to the action.

### **You have the right to provide written consent:**

1. Before assessments take place when the district evaluates or reevaluates your child for special education.
2. Before special education services are provided for the first time, that is, before the first individualized education program (IEP) is implemented.
3. Before personally identifiable information is disclosed to unauthorized persons. *Refer to Section 11, Education Records, for a list of persons who have the authority to see your child's education records without your consent.*
4. Before your private insurance is accessed by the district.
5. To use an individual family service plan (IFSP) instead of an IEP when your child is transitioning from Part C services to Part B services.

### **You have the right to:**

1. Refuse or withhold consent.
2. Revoke consent if the action has not already occurred.

If you refuse to give written consent for an initial evaluation or a reevaluation, the district may ask the State Department of Education (SDE) for mediation or a due process hearing. If you refuse to give written consent for placing your child in a special education program for the first time, the district cannot ask for mediation or a due process hearing. If you fail to respond to reasonable measures by the district to obtain your written consent for assessments during a reevaluation, personnel may proceed with the assessments.

## 2. Written Notice

### **You have the right to:**

1. Receive written notice a reasonable time before the district initiates or changes or refuses to change the identification, evaluation, educational placement, or the provision of a free appropriate public education (FAPE). If you ask the district to initiate or change any of these matters, the district must consider your request and give you written notice within a reasonable amount of time (generally regarded as 10 calendar days)

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2. If you cannot read, the notice can be read to you.

The district must have written documentation that the above requirements were met.

**Written notice must include:**

1. A description of the action proposed or refused.
2. An explanation of why the district proposes or refuses to take the action.
3. A description of other options the district considered and the reasons why those options were rejected.
4. A description of each evaluation procedure, test, record, or report the district used as a basis for the proposed or refused action.
5. A description of any other factors that are relevant to the district's proposal or refusal.
6. A statement informing you of your rights under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) and how to obtain a copy of this *Procedural Safeguards Notice*.
7. Sources for you to contact to obtain assistance in understanding your rights.

### **3. Evaluation/Reevaluation Procedures**

A full and individual evaluation of educational needs must be conducted before a child can be found eligible for and receive special education. A referral to consider a special education evaluation can be made by anyone, including you. For information on that process contact your district.

After the referral is made, an evaluation team, which includes you, will be formed. This team will review existing evaluation data on the child to decide whether an evaluation is needed. The team will also decide what additional information, if any, is needed to conduct the evaluation.

In conducting an initial evaluation, the team will gather and review information related to your child's involvement and progress in the general education curriculum through observations, interviews, tests, and a review of records, as well as information provided by you. If your child is eligible for special education services the evaluation information will also be used in the development of an IEP.

A reevaluation to determine whether your child continues to be eligible for special education services must be completed every 3 years. It can be done less frequently if conditions warrant and if both you and the district agree that a 3-year reevaluation is not needed. A reevaluation must be conducted before an evaluation team can determine that your child is no longer eligible for special education services. An exception to this is when your child receives a diploma for

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completing regular graduation requirements or completes the semester in which he or she turns 21 years old.

**As a member of the evaluation team, you have the right to:**

1. Review existing evaluation data and give input for the evaluation.
2. Participate in deciding what additional data is needed and to request assessments to determine eligibility.
3. Participate in determining eligibility for special education services.
4. Participate in eligibility meetings convened by the district.
5. Request a meeting of your child's evaluation team.
6. Receive a copy of the eligibility report and any additional eligibility documentation.

#### **4. Independent Educational Evaluation**

If you disagree with an evaluation conducted by the district, you have the right to an independent educational evaluation (IEE) by a qualified examiner(s) who does not work for the district. The IEE could be provided to you at no cost, but first the district must have had the opportunity to complete an evaluation. If you believe additional assessments or procedures are needed beyond those conducted by the district to determine eligibility, you are not automatically entitled to them. You should ask the district for further assessments, and if the district refuses, you may request mediation or a due process hearing. If you request an IEE at the district's expense, the district may ask why you disagree with the district's evaluation, but you are not required to provide an explanation. The district must either provide you with information about where an IEE may be obtained or the district must initiate a due process hearing without unnecessary delay to show that its evaluation is appropriate. Even if a hearing decision is that the district's evaluation is appropriate, you still have the right to an IEE, but at your own expense.

Whenever you request or obtain an IEE at public expense, the district must also give you the criteria it uses when an evaluation is conducted. This includes:

1. Locations for the evaluation.
2. Required qualifications of the examiner.
3. State eligibility criteria for special education.
4. Maximum allowable charges for specified evaluations to eliminate unreasonably excessive fees, including travel costs for necessary services not available in the community.

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If you can demonstrate that unique circumstances justify an IEE that falls outside the district's cost criteria, then it will be publicly funded. A hearing officer may order that an IEE be conducted as part of a hearing. In that case, the IEE must be publicly funded.

If you obtain an IEE that meets the district's IEE criteria and then make the evaluation available, the district must consider the results in any decision made about providing FAPE. You may also present the results of an IEE at a due process hearing. This is true regardless of whether the IEE was at your expense or public expense.

## **5. Individualized Education Program and Least Restrictive Environment**

The individualized education program (IEP) is the written education plan for your child's special education and related services that will be provided by the district. You and the district develop the IEP together at an IEP team meeting. It must be reviewed and revised at least once every 365 days by you and the other members of the IEP team. The team can meet when needed to address services, which may involve an amendment to the IEP or a behavioral intervention plan. The IEP team is composed of you (the parent or the adult student if rights have transferred), a district representative, a special education teacher, a general education teacher, and related service providers.

The IEP becomes the basis for determining placement in the least restrictive environment (LRE), which means that you have the right for your child, to the maximum extent possible, to be educated with students who are not in special education. *The district's reassignment of a child to another classroom or school is not a change in LRE placement when the IEP goals and services and the degree of interaction with nondisabled peers remains the same.*

### **LRE provisions require that:**

1. The child be enrolled in the school he or she would attend if nondisabled unless the IEP requires another arrangement.
2. If the child cannot be educated in the neighborhood school, the LRE placement should be as close to the child's home as possible.
3. Removal from the general educational environment occurs only when the disability is such that education cannot be achieved satisfactorily in that setting, even with the use of supplementary aids and services.
4. A child may not be removed from education in age-appropriate classrooms solely because of needed accommodations and/or adaptations to the general education curriculum. To the maximum extent appropriate, students with disabilities should be educated with students of similar chronological age who are nondisabled.

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**You have the right to:**

1. Participate as a member of the IEP team to develop the IEP and determine the LRE placement either in person or by other means, such as a teleconference.
2. Be informed of the time, date, location, who is invited, and the purpose of IEP team meetings and have the meeting scheduled at a time and place convenient both for you and the district.
3. Receive a copy of the *Procedural Safeguards Notice* once per year. In addition you must receive a copy upon initial referral, upon your request for another copy, or if you file a formal complaint or a request for a due process hearing.
4. Bring someone who can assist in the development of your child's plan (advocate, friend, service coordinator) to the meeting if you wish.
5. Receive a copy of the IEP.
6. Consider, as a member of the team, an array of LRE placements available to meet your child's needs.

## **6. Resolving Disagreements about the Education Program**

At times, you and the district may disagree with the identification, evaluation, placement, or the provision of FAPE. You are encouraged to contact the district and use various methods to resolve any differences as soon as they arise.

You have the right to file a written objection if the district proposes an IEP change or placement change that you disagree with. If your written objection is postmarked or hand delivered within 10 calendar days of receiving the district's written notice of a proposed change, the proposed change that you object to cannot be implemented. However, the district may request another IEP team meeting, voluntary mediation, or a due process hearing to resolve the disagreement. The written objection cannot be used to prevent the district from placing a child in an interim alternative educational setting (IAES) in accordance with the IDEA 2004 procedures for discipline of a child with a disability.

If you are unable to resolve disputes with the district, you may contact the district or call the SDE, 208/332-6912, about five state-administered options. These options include IEP facilitation, mediation, a formal complaint, a due process hearing, and an expedited due process hearing. Each of these options is explained in the following sections.

If you have questions regarding any of these processes, call **208/332-6912**. Correspondence should be directed to: Dispute Resolution Coordinator, State Department of Education, Bureau of Special Population Services, P.O. Box 83720, Boise, ID 83720-0027.

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### **6.a. IEP Facilitation**

IEP facilitation is a voluntary process during which a neutral SDE-contracted individual is appointed to oversee and conduct the IEP team meeting. IEP facilitation is provided at no cost to you or the district. The role of the facilitator is to help team members communicate more effectively and efficiently. The facilitator is not a member of the IEP team and has no stake in decisions made by the team. If you and the school district cannot resolve the issue at the IEP meeting with the help of IEP facilitation, all other options are still available to you, including participating in mediation, filing a formal complaint, or requesting a due process hearing. To request an IEP facilitator, contact your district or the Dispute Resolution Coordinator at the State Department of Education, 208/332-6912.

### **6.b. Mediation Provided by the SDE**

**Mediation provided by the SDE is:**

1. A structured yet informal process for resolving conflict between you and the district regarding your child's identification, evaluation, educational placement or provision of FAPE.
2. Available at any time.
3. Voluntary, which means that you and the district both must agree to go to mediation.
4. A free service paid for by the SDE.
5. A meeting where an impartial, trained person (a mediator) not employed by the district meets with you and the district to try to reach a written agreement that is enforceable in court.
6. Confidential, which means discussions in the mediation session may not be used as evidence in a due process hearing or in court.

If you have already requested a due process hearing or filed a complaint, you may also request mediation from the State Department of Education. Mediation does not interfere with your right to and the timelines of a formal complaint or a hearing.

### **6.c. Formal Complaint**

You have the right to file a formal complaint if you believe the district has violated a requirement of the IDEA 2004.

**A complaint:**

1. Must be signed, dated, and include the name, address, and telephone contact of the child and person making the complaint.

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2. Must include one or more allegations (statements) that the district has violated the IDEA 2004 requirements. The alleged violations may not be older than one year from the date the complaint is filed unless the violation is considered to be ongoing *or* you are requesting compensatory services for a violation that occurred not more than 3 years ago.
  3. Must include facts to support the allegation(s).

Mail complaints to the Dispute Resolution Coordinator, Idaho State Department of Education, Bureau of Special Population Services, P.O. Box 83720, Boise, ID 83720-0027. Complaints filed by email will not be accepted.

**The SDE may resolve a formal complaint through any combination of the following:**

1. Meeting with the parties and facilitating a mutually agreed to Early Complaint Resolution (ECR).
2. Reviewing and approving a Corrective Action Plan (CAP) proposed by the district that addresses the allegation(s).
3. Conducting an investigation of the complaint.
4. Verifying information from the district that documents that one or more allegations have been resolved.

A final report will be issued within 60 calendar days and will include findings of fact, conclusions, and corrective actions, if necessary. The SDE will set aside any part of a complaint that is being addressed in a due process hearing until the conclusion of the hearing.

**6.d. Due Process Hearing**

You have the right to file a due process hearing request with the SDE and the school district on any matter relating to identification, evaluation, educational placement, or the provision of FAPE.

You must file your request for a due process hearing within 2 years of the decision you are challenging. However, you have more time to file a due process hearing request if:

1. You were prevented from filing a request because the district misrepresented that it had resolved the problem; or
2. The district withheld information from you about special education assistance that your child may be entitled to.



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**Due process hearing requests must:**

1. Be in writing and include the child's name, address, and school. and may not be received through email. *A model form for requesting a hearing can be obtained from the district or the SDE.*
2. Include a description of the problem, relevant facts, and a proposed answer to the problem.

The district can object to the hearing officer within 15 calendar days of receiving your request if it believes that your request isn't specific in identifying the issues, the facts, and the relief you are seeking. The SDE will provide reasonable accommodations to individuals who need assistance in filing a written request for a due process hearing. The request will be sent to your district's superintendent, director of special education, and the SDE Dispute Resolution Coordinator.

**You will have the opportunity to resolve your dispute with the district through these options:**

1. You will be offered mediation.
2. You can participate in a resolution session.

**Resolution Session:** Within 15 calendar days after the SDE receives your request for a due process hearing, district staff will meet with you and relevant members of your child's IEP team who have specific knowledge of the facts identified in your request for a due process hearing. You and the district will have the opportunity to resolve the issues at that meeting. The resolution session will be held unless you and the district both agree in writing to waive this meeting or to use the mediation process provided by the SDE. The district cannot bring its attorney to the resolution session unless you bring your attorney. If resolution is reached, a written agreement will be signed by you and the district. This written agreement can be voided within 3 business days. The agreement is enforceable in court.

A due process hearing will be scheduled if resolution is not reached within 30 calendar days of your initial request.

**There are two different types of due process hearings:**

1. A regular due process hearing may be requested by you or the district on any matter relating to identification, evaluation, educational placement, or the provision of FAPE. A decision will be made within 45 calendar days from the date of the request for the hearing, unless otherwise extended by the hearing officer.
2. An expedited hearing. The hearing must be held within 20 school days of the request with a decision issued within 10 school days of the expedited hearing. (See Section 6.e.)

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**You have the right to:**

1. Have the hearing conducted by a trained impartial hearing officer who is not employed by any agency involved in the education or care of your child.
2. Receive all evaluations completed by the district and the recommendations based on such evaluations at least 5 business days before the hearing. Similarly, you are required to provide evaluations and any other documents that you will use in the hearing to the district at least 5 business days before the hearing.
3. Be informed of any free or low-cost legal services and other relevant services, e.g., names of expert witnesses.
4. Have the hearing at a time and place that allows you to attend.

**During the hearing, you have the right to:**

1. Attend with, and be advised by, legal counsel and by persons with special knowledge or training about children with disabilities.
2. Present evidence and confront, cross-examine, and compel the attendance of witnesses.
3. Prohibit the introduction of any evidence at the hearing that was not disclosed to you at least 5 business days before the hearing.
4. Obtain a written transcript of the hearing or an electronic verbatim record.
5. Open the hearing to the public if you wish.
6. Have the child present during the hearing, if appropriate.

**You also have the right to:**

1. Receive a written decision with findings of fact and conclusions of law, or an electronic version, no later than 45 calendar days after your hearing request was received. The hearing officer may extend this timeline for a specific period of time if a party requests.
2. Maintain the child's current educational placement while the due process hearing is proceeding unless you agree in writing to other arrangements. If the complaint involves a child seeking initial admission to school, the school-age child must be placed in a school until the proceedings are over.
3. Appeal the hearing officer's decision by initiating a civil action in district court. An appeal to civil court must be filed within 42 calendar days from the date of issuance of the hearing officer's decision.

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If you are successful in a hearing and file a request in district court, you may be awarded reasonable attorney fees. (See Section 9.)

The hearing officer's decision, unless appealed, is enforceable in state or federal court.

### **6.e. Expedited Due Process Hearing**

An expedited due process hearing is used only for behavior and disciplinary issues. (See Section 7 of this notice.)

An expedited due process hearing involves disciplinary issues, and shortened timelines apply. You have the right to request an expedited hearing if you disagree with a determination that the behavior was not a manifestation of the disability or the district's discipline decision resulting in a change of placement.

In an expedited hearing, the due process hearing procedures described in Section 6.d. of this notice will be used except for the following changes:

1. The hearing must be held within 20 school days of the request with a decision issued within 10 school days of the expedited hearing. No extensions of time are permitted.
2. The child must remain in the interim alternative educational setting (IAES) until the hearing officer makes a decision, the IAES time limit runs out, or you and the district agree to another placement for the duration of the hearing process and any subsequent appeals.

If the IAES timeline runs out during the hearing, the setting prior to the IAES becomes the placement. However, if school district personnel maintain that returning the child to that placement would be dangerous, they may request an expedited hearing to ask a hearing officer to continue the IAES, or they may seek a court injunction to prevent your child from returning to school. This expedited hearing procedure may be repeated as necessary.

## **7. General Provisions for Discipline under the IDEA 2004**

The district may use disciplinary removals for children with disabilities, but only to the extent they would be applied to children without disabilities.

### **School personnel may:**

1. Suspend a child for not more than 10 consecutive school days. Special education services may cease during this time.
2. Order additional short-term suspensions if they do not constitute a change of placement. A series of suspensions becomes a change of placement when it exceeds 10 cumulative school days in a school year and if a pattern is established by their proximity to one another and the total amount of time. Special education and services enabling your child to make progress in

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the general curriculum must be provided after removal for 10 cumulative school days in the same school year.

3. Order a child's removal to an interim alternative educational setting (IAES) for not more than 45 school days if the child:
  - a. possesses or carries a weapon to school or a school function;
  - b. knowingly possesses or uses illicit drugs;
  - c. sells or solicits the sale of a controlled substance while at school or a school function; or
  - d. inflicts serious bodily harm to another person while at school or at a school function.

Special education services and services enabling your child to make progress in the general curriculum must be provided in the IAES. (See Section 8.)

4. Request an expedited hearing to place a child in an IAES for up to 45 school days if the district can demonstrate that maintaining the child in the current placement is substantially likely to result in injury to the child or others. Special education services must be provided.
5. Seek to obtain a court order to remove a child from the current placement. Special education services must be provided during this time.
6. Expel the child for behavior that is not a manifestation of his or her disability. A "manifestation determination" means that you and other members of the IEP team will determine whether your child's behavior was caused by or directly resulted from his or her disability *or* the failure to implement the IEP. A FAPE must be provided after 10 cumulative school days of removal in a school year regardless of whether or not the behavior was a manifestation of the child's disability.

## **8. Procedures for Disciplinary Placement in an Interim Alternative Educational Setting (IAES)**

If school personnel order a disciplinary removal to an IAES, **you have the right to:**

1. Be notified of the disciplinary action to be taken and to receive a *Procedural Safeguards Notice* no later than the date on which the decision to take disciplinary action is made.
2. Participate, as a member of the IEP team, in the selection of the IAES that meets the following criteria:
  - a. enables the child to continue to participate in the general education curriculum, although in another setting;
  - b. allows the child to continue to receive services and any accommodations or adaptations included in the current IEP in order to meet the goals; and
  - c. includes services designed to prevent the behavior from recurring.
3. Participate in an IEP team meeting either before or within 10 business days following the disciplinary placement change. The purpose of the meeting is to consider the problem behavior and to:

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- a. review and modify the behavioral intervention plan as needed to address the problem behavior; or
    - b. develop an assessment plan to address the problem behavior if the district has not previously conducted a functional behavioral assessment and implemented a behavioral intervention plan. Upon completing the assessments, the IEP team will meet to develop and implement appropriate behavioral interventions.
  4. Participate in a meeting to review the relationship between your child's disability and his or her behavior no later than 10 school days after the date the district decides to place the child in an IAES. This review is called a manifestation determination. The meeting can be held at the same time the IEP team considers a functional behavioral assessment and/or behavioral intervention plan. The child cannot be expelled for behavior that is related to his or her disability.
  5. Request an expedited due process hearing if it is determined that the behavior was not a manifestation of your child's disability and you disagree with that decision or any decision regarding a change in placement, including placement in an IAES. (See Section 6.e. of this notice.)

## **9. Attorney Fees**

If you have participated in a due process hearing or civil court action against the district, you may be able to recover reasonable attorney fees and related costs from a court if:

1. The court determines that you are the prevailing party.
2. A court orders the district to pay fees and costs according to typical rates in your community for the kind and quality of legal services you received.

Attorney fees may not be awarded and related costs may not be reimbursed in any action or proceeding for services performed after the time of a written offer of settlement to you by the district if:

1. The district's offer is made at least 10 days before a due process hearing or civil proceeding begins.
2. You do not accept the offer within 10 days after it is made.
3. A court or due process officer finds that the relief you finally obtained from the hearing officer or court action was not more favorable to you than the offer of settlement.

An award of attorney fees and related costs may be made to you as a prevailing party if you were justified in rejecting the settlement offer.

**Attorney fees may not be awarded:**

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1. For legal representation at an IEP meeting unless such a meeting is convened as a result of a due process hearing or judicial action.
  2. For a mediation that is conducted before a request for a due process hearing.

**A court may reduce an award for attorney fees if:**

1. During the course of the action or proceeding, you unreasonably extended the final resolution of the controversy.
2. The amount of the request unreasonably exceeds the prevailing rate in the community for similar services by attorneys of reasonably comparable skills, reputation, and experience.
3. The time spent and legal services rendered were excessive considering the nature of the action.
4. The attorney representing you did not provide all of the information required in a due process hearing request.

The amount of attorney fees will not be reduced if the court finds that the district or SDE unreasonably extended the final resolution of the action or proceeding.

**A district that prevails:**

1. May seek attorney fees from a court against the parent's attorney if the action is deemed frivolous, unreasonable, or without foundation or if it has prolonged the final litigation.
2. May seek attorney fees from a court against the parent's attorney or the parent if the hearing request was presented for improper purposes, such as to harass the district, cause unnecessary delay, or needlessly increase the cost of litigation.

## **10. Requirements for Unilateral Placement in a Private School/Facility at Public Expense**

If you disagree with the FAPE offered in the IEP, developed by the IEP team, you may unilaterally (on your own without the district's support) place your child in a private school or privately obtain the special education or related services you feel your child needs. If you intend to seek reimbursement for your costs, then prior to removing your child from the public school you need to (1) notify the district either at the last IEP meeting or (2) provide written notice at least 10 business days before such removal. To seek reimbursement for such services you must then request a due process hearing.

If the district has made FAPE available in a timely manner and you unilaterally (on your own and without the district's consent) place the child in a private school, the district is not required to pay for tuition, special education, or related services at the private school.

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A court or hearing officer may order the district to reimburse you for the costs of a unilateral placement in a private school only if the child previously received special education services from the district and the court or hearing officer determines that the district did not make FAPE available in a timely manner and that your private placement was appropriate.

However, the cost of reimbursement may be denied or reduced if:

1. Prior to removing your child from public school, you did not cooperate with the district after it notified you of its intent to conduct an evaluation of the child.
2. There is a judicial finding of unreasonableness with respect to your actions.
3. Before removing your child from public school, you did not notify the district that you rejected its proposed placement to provide FAPE and did not state your concerns and intent to enroll the child in a private school at district expense by either:
  - a. notifying the IEP team at the most recent IEP team meeting before removal from public school; or
  - b. notifying the district in writing at least 10 business days (including any holidays that occur on a business day) before removal from public school.

A court or hearing officer will not deny or reduce reimbursement to you for failure to provide the notice specified in item 3 above if:

1. The district did not notify you of your obligation to provide the notice specified in item 3 above.
2. The district prevented you from providing such notice.
3. You cannot write in English or you have a disability that prevents you from providing a written statement.
4. The court or hearing officer determines that the placement proposed by the district would result in physical or serious emotional harm to the child.

## **11. Education Records**

The IDEA 2004 and the Family Educational Rights and Privacy Act (FERPA) contain provisions that protect the confidentiality of child records. These laws also provide for your right to review and inspect your child's records. The district will assume you have the right to inspect and review your child's education records unless the district has received legal binding documents limiting access to those records.

### **You have the right to:**

1. Request a list of the kinds of educational records the school collects, maintains, or uses, for your child and where those records are kept.

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2. Inspect and review your child's educational records. If you cannot do so at the school, you may ask the district to give you a copy of the records. The district may charge for the copies unless the charge would keep you from looking at the records. The district may not charge a fee to search for or to collect the records. The district must honor your request:
    - a. without delay but no later than 45 calendar days after the request;
    - b. before any meeting regarding an IEP; and
    - c. no later than 5 business days before a due process hearing.
  3. Have someone explain, read, or interpret the records for you.
  4. Give or refuse written consent to allow other people access to the education records. The request for consent must say what specific information has been requested, the purpose of the request, and who will access the records. However, consent is not required to release records when:
    - a. School employees have a legitimate educational interest in the records.
    - b. A representative of the Federal Comptroller General, the U. S. Department of Education, or the SDE accesses records for evaluation of a federal program or for enforcement or compliance with federal regulations.
    - c. Your child transfers from one school with the intent to enroll in another school.
    - d. There is an emergency to protect the health and safety of your child or other individuals.
    - e. A disclosure concerns the juvenile justice system's ability to effectively serve your child or to comply with court orders or subpoenas, as specified in state law. The district must make a reasonable effort to notify you of the order or subpoena in advance of compliance unless the subpoena specifically states that the request is not to be disclosed.
    - f. Organizations conduct studies on behalf of school districts or institutions specified under FERPA criteria.
    - g. When the district has designated information as "directory information" through its annual notification.
  5. Review a district log of requests for and access to education records if the disclosure is not to the parent (or an adult student if rights have transferred), a school employee with a legitimate interest, or a party seeking directory information. This log includes the name, agency affiliation, date, and purpose for accessing the records.
  6. Look only at information about your child if the record contains information about another child.
  7. Ask the district to amend information in the record if you believe that it is incorrect, misleading, or violates privacy or other rights. If the district refuses to amend the record, you may request a district hearing. If the decision is against the district, the district must amend the record and inform you in writing. If the decision is for the district and the record is not amended, you may place a statement in the record saying why you disagree with the district's record. This statement will be maintained as part of the education record and will be released any time the record is released.



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8. Be notified before the district destroys education records that are more than 5 years old and no longer needed to provide educational services. The notice must describe the information that will be destroyed after 45 days and include the procedure to formally object to the destruction of any information and have the records sent to you.

A permanent record of a child's name, address, phone number, grades, classes, immunization, test scores, attendance, grade level and year completed may be maintained by the district without a time limitation.

## **12. Using Public and Private Insurance Funds to Provide FAPE**

The district may use Medicaid funds to pay for special education and related services. However, the district may not require you to sign up or enroll in Medicaid in order for the child to receive FAPE. If the district bills Medicaid for services, you must be notified of the frequency, amount, and type of services that the district will be submitting for reimbursement. If the district uses Medicaid, it must not result in any of the following:

1. Your family incurring out-of-pocket expense.
2. Your family paying for services required for your child outside of school that would otherwise be paid for by Medicaid.
3. A decrease in available lifetime coverage or any other insured benefit for your child.
4. An increase in premiums or lead to discontinued insurance coverage.
5. The risk of loss of eligibility for home and community-based waivers.

The district may access your private insurance to bill for services only if you provide informed written consent. Use of your private insurance is voluntary and does not impact the right of your child to receive evaluations or IEP services. Each time the district proposes to access your private insurance, the district must obtain your written consent and must inform you that a refusal to access your private insurance will not relieve the district of its responsibility to ensure that all required services are provided at no cost to you. If you consent to use private insurance, the district may use federal special education funds to pay the cost of the deductible or co-pay amounts to avoid a financial cost to you.